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Date: 04/01/2024

Dias, Liyanagamage Ranganath Prabashwara

Time: 1:15:57 PM

University of Rochester

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JAMIE ROMEO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

LIYANAGAMAGE RANGANATH PRABASHWARA DIAS,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

Index No. E2024003035

Motion #2

LIZA R. MAGLEY affirms, pursuant to N.Y. C.P.L.R. 2106, that the following is true and correct:

1. I am an attorney admitted to practice in the courts of the State of New York and a member of the law firm of Bond, Schoeneck & King, PLLC, attorneys for Respondent University of Rochester (the "University") in this action.

2. I submit this affirmation in opposition to Petitioner Liyanagamage Ranganath Prabashwara Dias ("Petitioner")'s Motion for Preliminary Injunction (the "Preliminary Injunction Motion").[1]

3. On February 14, 2024, Petitioner commenced this action by filing a Verified Petition against the University. NYSCEF Doc. No. 1 ("*Pet.*").

[1] This affirmation expressly incorporates all documents the University files contemporaneously herewith in opposition to Petitioner's Article 78 Proceeding, including the University's Answer, dated March 28, 2024 and verified March 27, 2024, the Affirmation of David Figlio, Ph.D., executed March 25, 2024, and the Affirmation of Stephen Dewhurst, Ph.D., executed March 28, 2024.

4. Contemporaneously to filing his Verified Petition, Petitioner filed two orders to show cause. NYSCEF Doc. Nos. 22 ("*OTSC #1*"), 23 ("*OTSC #2*").

5. OTSC #1 commenced "Motion #1" on the docket. A true and correct image of the documents affiliated with Motion #1 on the docket, as taken by me on March 27, 2024, is attached hereto as **Exhibit A**.

6. The first order to show cause ("OTSC #1") seeks the following orders:

> . . . that the respondent, University of Rochester, show cause before this Court at the Supreme Court, Monroe County, 99 Exchange Blvd. Hall of Justice, in room on _____ at _____ or as soon thereafter as counsel may be heard, why an order should not be made, *granting a preliminary injunction enjoining respondent from concluding its Investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias (the Investigation) until his grievance committee pending before the University of Rochester's UCTP has concluded, including appeals processes related to this grievance have been exercised.* Petitioner brings requests this order as the body conducting the Investigation is doing so in a manner violative of Dr. Dias's rights and the respondent's concluding its process now will cause immediate and irreparable injury, loss or damage to petitioner.
>
> . . . that service of a copy of this Order together with a copy of the papers upon which it is granted by personal service upon the respondent and upon Laura Harshbarger, counsel for the respondent, on or before _____, shall be deemed good and sufficient service, and it is further
>
> . . . that pending the hearing and determination of this application, the *respondent is enjoined and restrained from concluding its Investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias (the Investigation) until his grievance pending before the University of Rochester's UCTP has concluded, including the conclusion of any available appeals processes related to the UCTP's determination*.

See OTSC #1 (emphasis added).

7. OTSC #1 commenced "Motion #1" on the docket, *see* Ex. A, and it appears, based on the emphasized language above, to concern injunctive relief.

8. The second order to show cause ("OTSC #2") seeks the following orders:

> . . . that the respondent, University of Rochester, show cause before this Court at the Supreme Court, Monroe County, 99 Exchange Blvd. Hall of Justice, in room on _____ at _____ or as soon thereafter as counsel may be heard, why an order should not be made, *sealing the entire record of Petitioners request for this court to grant a preliminary injunction* enjoining respondent from concluding its Investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias (the Investigation) until his grievance committee pending before the University of Rochester's UCTP has concluded, including appeals processes related to this grievance have been exercised.
>
> . . . that service of a copy of this Order together with a copy of the papers upon which it is granted by personal service upon the respondent and upon Laura Harshbarger, counsel for the respondent, on or before _____, shall be deemed good and sufficient service, and it is further
>
> . . . that pending the hearing and determination of this application, the *respondent is enjoined and restrained from concluding its Investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias (the Investigation) until his grievance pending before the University of Rochester's UCTP has concluded, including the conclusion of any available appeals processes related to the UCTP's determination*.

See OTSC #2 (emphasis added).

9. OTSC #2 is not associated with any "Motion" on the docket. *See* Exs. A (*supra*), B (*infra*). Curiously, based on the emphasized language above, though it discusses sealing in its first paragraph, OTSC #2 also appears to seek an order granting injunctive relief identical to that enumerated in OTSC #1.

10. On February 20, 2024, Petitioner filed an amended order to show cause ("OTSC #3"). NYSCEF Doc. No. 26 ("*OTSC #3*").

11. OTSC #3 seeks the following order:

> . . . that Respondent, University at Rochester, is *prohibited from concluding its investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias until his grievance*

> *committee pending before the Respondent's University Committee on Tenure and Privileges ("UCTP") has concluded, and all appeals processes related to this grievance have been exercised*.

See OTSC #3 (emphasis added).

12. Petitioner connected OTSC #3 to "Motion #1" on the docket, *see* Ex. A, and it seeks injunctive relief similar to the injunctive relief requested in both OTSC #1 and OTSC #2, with no reference to sealing.

13. On February 26, 2024, Petitioner filed another amended order to show cause ("OTSC #4"). NYSCEF Doc. No. 27 ("*OTSC #4*").

14. OTSC #4 seeks the following orders:

> . . . that the respondent, University of Rochester, show cause before this Court at the Supreme Court, Monroe County, 99 Exchange Blvd. Hall of Justice, in room on ____ at _____ or as soon thereafter as counsel may be heard, why an order should not be made, *sealing the entire record of Petitioners request for this court to grant a preliminary injunction* enjoining respondent from concluding its Investigation into alleged Research Misconduct by Liyanagamage Ranganath Prabashwara Dias (the Investigation) until his grievance committee pending before the University of Rochester's UCTP has concluded, including appeals processes related to this grievance have been exercised.
>
> . . . that service of a copy of this Order together with a copy of the papers upon which it is granted by personal service upon the respondent and upon Laura Harshbarger, counsel for the respondent, on or before _____, shall be deemed good and sufficient service, and it is further
>
> . . . that, absent further order of the court, *the Clerk shall deny access to the file to anyone except for counsel of record to any party to this case, a party, and any representative of counsel of record to a party upon presentation to the Clerk of written authorization from said counsel*.

See OTSC #4 (emphasis added).

15. While OTSC #4 is affiliated with Motion #1 on the docket, *see* Ex. A, it appears to reiterate a request for a sealing order first raised in OTSC #2.

16. On February 28, 2023, Petitioner filed yet another amended order to show cause ("OTSC #5"). NYSCEF Doc. No. 28 ("*OTSC #5*").

17. OTSC #5 seeks the following order:

> that Respondent, University at Rochester, is *prohibited from proceeding with the "UCTP Termination Process", until Respondent properly adjudicates Dr. Liyanagamage Ranganath Prabashwara Dias' grievances, and all appeals processes related to those grievances have been exercised.*

See OTSC #5 (emphasis added).

18. OTSC #5 commenced "Motion #2" on the docket. A true and correct image of the documents affiliated with Motion #2 on the docket, as taken by me on March 27, 2024, is attached hereto as **Exhibit B**.

19. OTSC #5 seeks injunctive relief similar to the injunctive relief requested in both OTSC #1 and OTSC #2, though with respect to a different phase of University proceedings. It contains no reference to sealing.

20. On February 28, 2024, this Court (Hon. Sam L. Valleriani, J.S.C.) signed OTSC #5 with revisions (the "Order"). NYSCEF Doc. No. 38 ("*Order*").

21. The Order was entered on March 1, 2024. *See Order*.

22. The Order states:

> Let the Respondent show cause before a Term of this Court, to be held at the Courthouse located at Hall of Justice, 99 Exchange Blvd., Rochester, New York in room --- *on submission only unless oral argument is requested and granted * on April 4, 2024 at 10:00 o'clock in the afore noon or as soon as the parties to this proceedings [sic] may be head why an order should not be made, providing the following relief: a temporary restraining order prohibiting the [University] from allowing utilizing [sic] any University Committee on Tenure and Privileges proceeding related to the termination of [Petitioner] (the "UCTP Termination Process"), until [the University] properly adjudicates [Petitioner's] grievances, and all appeals processes related to those grievances have been exercised,

> and why . . . Petitioner, should not have such other and further relief as may be just, proper and equitable.
>
> Pending hearing of this motion, it is;
>
> ORDERED that Petitioner's request for a TRO is denied (see In re Application of Carlos Valentine v Schembri, 212 AD2d 371 [1St Dept 1995]; Mangovski v Dimarco, 175 AD3d 947 [4th Dept 2019], and it is further;
>
> ORDERED, that Petitioner's request for a preliminary sealing order is denied as not meeting the "good cause" standard of 22 NYCRR 216.1.
>
> Sufficient cause appearing therefor, let service of a copy of this order, and the other papers upon which this order is granted, upon the Petitioner(s)/Defendant(s) by _____ on or before the 14th day of March, 2024 be deemed good and sufficient. An affidavit or other proof of service shall be presented to this Court on the return date directed in the second paragraph of this order.

See Order.

23. Through the Order, the Court absorbed the most recent orders to show cause (OTSC #4 and #5) into one Order, and connected it on the docket to Motion #2. *See* Ex. B.

WHEREFORE, based on the foregoing, and for all the reasons enumerated in the University's accompanying papers in opposition thereto, I respectfully submit Petitioner's Injunction Motion should be denied, in its entirety and with prejudice.

I AFFIRM, on this 27th day of March, 2024, under the penalties of perjury under the laws of the State of New York, which may include fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Liza R. Magley

22 N.Y.C.R.R. 202.8-B CERTIFICATION

I CERTIFY, on this 27th day of March, 2024, that the foregoing affirmation was prepared on a computer, using "Times New Roman" typeface, in 12-point size, with double-line spacing, and that the total number of words in the affirmation, exclusive of the caption and signature block, as calculated by the word-processing system used to prepare the affirmation, is 1,666.

Liza R. Magley